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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KIMBERLY YOUNG, *et al.*,

10 Plaintiffs,

11 v.

12 REGENCE BLUESHIELD, *et al.*,

13 Defendants.

Case No. C07-2008RSL

ORDER DENYING MOTION
FOR RECONSIDERATION

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15 This matter comes before the Court on plaintiffs' motion for reconsideration of the
16 Court's June 4, 2009 order granting defendant's motion to dismiss for failure to join
17 required parties (Dkt. #101, the "Order").¹ Plaintiffs argue that the Court erred in finding
18 that the medical care professionals who provide services to defendant's subscribers (the
19 "providers") are required parties who could not feasibly be joined, and that this case
20 should be dismissed rather than proceeding in their absence.

21 "Motions for reconsideration are disfavored. The Court will ordinarily deny such
22 motions in the absence of a showing of manifest error in the prior ruling or a showing of

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24 ¹ Consideration of the motion for reconsideration has been delayed while
25 defendant filed a Court-requested response, plaintiff moved to file a reply, then defendant
26 moved to file a sur-reply.

1 new facts or legal authority which could not have been brought to its attention earlier with
2 reasonable diligence.” Local Rule 7(h).

3 In arguing for reconsideration, plaintiffs reiterate many of the arguments from their
4 memorandum opposing the prior motion to dismiss. The Court will not readdress those
5 arguments but will focus on the new issues raised. First, plaintiffs argue that the Court
6 erred in finding that complete relief could not be awarded among the existing parties.

7 The Order explained,

8 The Court considers the fact that, as a practical matter, plaintiffs are ultimately
9 seeking to force the providers to accept the lower rates for all services. Reply on
10 Motion for Class Certification at p. 2 (Plaintiffs stated, “Regence would not pay
11 anything out of pocket by virtue of processing the claims to the negotiated rates in
12 accordance with the contracts at issue, although it would oblige the Preferred
Provider to continue to accept the negotiated rates.”). However, as plaintiffs
concede, any judgment in this case would not be binding on the providers.
Therefore, because the Court cannot compel the providers to accept the lower rate,
complete relief cannot be obtained without the providers.

13 Order at p. 7. As an initial matter, that finding relates Rule 19(a)(1)(A), and a party must
14 satisfy the requirements of subsection (A) *or* (B). Because the Order found that both
15 subsections were met, the finding under subsection (A) is superfluous. Regardless,
16 plaintiffs have not shown that the Court erred. Instead, they raise new theories of relief,
17 as set forth more fully below, but newly-minted theories do not justify reconsideration.

18 Second, plaintiffs contend that the requirements of subsection (B) were not met
19 because the providers never affirmatively claimed an interest in the subject matter.
20 However, plaintiffs have not shown that the providers received notice of this action that
21 should have caused them to assert an interest. Plaintiffs rely solely on the fact that they
22 subpoenaed records from two of plaintiffs’ physicians. However, the fact that those
23 physicians had notice of the existence of a lawsuit is not notice of the nature of the
24 lawsuit. There is no evidence that the physicians had notice that this action was anything

1 more than a routine billing dispute between a patient and insurer. Plaintiffs also argue
2 that the Court prematurely noted that they “are seeking to affect the amount the providers
3 can charge subscribers for health services.” Order at p. 3. Plaintiffs’ filings, however, are
4 replete with statements to that effect;² indeed, it is the focus of their claims. Plaintiffs
5 also contend that the providers “have contractually ceded to Regence any interest in
6 charging the Regence subscribers their non-contracted rates and any interest they retain
7 would not be substantially impaired” by requiring them to accept the lower, preferred
8 provider rate for all services. Motion for Reconsideration at p. 8. In support, plaintiffs
9 rely on *Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training*
10 *Comm.*, 662 F.2d 534 (9th Cir. 1981), a case that they cited in opposing the motion to
11 dismiss. In *Eldredge*, the Ninth Circuit found that the potential employers of apprentices
12 were not required parties in a discrimination lawsuit because the employers had
13 contractually agreed to give the apprenticeship committee “full authority to . . . structure
14 the apprenticeship program and to select the apprentices.” *Id.* at 538 (concluding that the
15 employers “have by contract ceded to JATC whatever legally protectible interest they
16 may have in selecting apprentices to be trained.”). In this case, the providers have not
17 ceded to Regence their protectible interest in setting rates for their services. Rather, the
18 preferred provider agreements permit the providers to set their rates for non-covered
19 services. As to covered services, the agreements entitle the providers to notice and an
20 opportunity to reject any changes in payment methodology and levels. The provider can
21 accept the proposed changes, seek to negotiate with Regence, or terminate the agreement.

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23 ² Order at p. 7 (citing Reply on Motion for Class Certification at p. 2) (Plaintiffs
24 stated, “Regence would not pay anything out of pocket by virtue of processing the claims
25 to the negotiated rates in accordance with the contracts at issue, although it would oblige
the Preferred Provider to continue to accept the negotiated rates.”).

1 The employers in *Eldredge* lacked similar rights, which distinguishes this case. As the
2 Order explained, a Court ruling like plaintiffs seek in this case would impair the
3 providers' ability to negotiate their contracts, which makes this case more like *American*
4 *Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015 (9th Cir. 2002), a case that was dismissed
5 under Rule 19.³ Furthermore, even if the providers had received notice of the lawsuit,
6 recent cases have not required an "affirmative" claim of interest under similar
7 circumstances. See, e.g., *American Greyhound*, 305 F.3d 1015; *Takeda v. N.W. Nat'l*
8 *Life Ins. Co.*, 765 F.2d 815 (9th Cir. 1985).

9 Third, plaintiffs contend that the providers can be joined as parties. However,
10 Regence expressly argued in its motion to dismiss that the providers could not feasibly be
11 joined, which is a key issue under Rule 19, and plaintiffs did not respond to that
12 argument. As a result, the Order noted that plaintiffs conceded that the providers could
13 not be joined. Plaintiffs cannot now undo that concession on reconsideration by calling it
14 a mere "oversight." Reply at p. 6 n.2.

15 Fourth, plaintiffs contend that the case can proceed without the providers because
16 any harm to them is speculative and can be avoided. To support that argument, plaintiffs
17 offer new theories not presented in opposition to the motion to dismiss. For example,
18 they argue that the Court could require Regence to indemnify all of its subscribers for
19 payment-related claims with preferred providers, or indemnify all preferred providers for
20 the difference between their rate and what subscribers remit. The Court will not consider
21 new theories presented for the first time on a motion for reconsideration. Even if it did,
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23 ³ In *American Greyhound*, the court found that plaintiff had a protectible contract
24 interest even though the contract at issue was subject to a right of renewal that was purely
25 voluntary; the interest at stake need not be "property in the sense of the due process
26 clause." *American Greyhound*, 305 F. 3d at 1023.

1 plaintiffs lack standing to seek such injunctive relief on behalf of group plan subscribers
2 because they were not members of a group preferred plan when they filed their complaint.
3 Furthermore, the injunctive relief sought appears unworkable because it is not feasible for
4 Regence to determine how much each provider billed and how much each subscriber
5 actually paid on every claim for thousands of claims by thousands of subscribers. Nor
6 would the prejudice to providers be lessened if the Court were to order that Regence
7 indemnify them. Requiring providers to seek reimbursement from subscribers and from
8 Regence would subject the providers to significant burden, expense, and uncertainty of
9 complete reimbursement. Although plaintiffs argue that the feasibility of their proposals
10 is irrelevant at this point, Rule 19 involves a practical inquiry;⁴ the Court will not find that
11 joinder is feasible if plaintiffs lack standing or if the relief sought is not practicable.

12 Plaintiffs also present a new damages theory: if the case were to be reopened, they
13 would seek to have the dismissal of their ERISA claim vacated so that they could move to
14 amend their complaint, move to reopen discovery, move to admit the opinion of a
15 previously undisclosed expert, and move to certify additional classes under ERISA to
16 seek restitution of premiums paid. Even if it had been timely raised, the new theory is too
17 speculative to justify reconsideration. Moreover, plaintiffs have not shown that
18 restitution is available under ERISA.

19 Finally, plaintiffs argue that the Court's order has left them without a remedy.
20 They contend that their ERISA claim based on the group plan may now be barred by the
21 six-year statute of limitations, and they cannot obtain adequate relief from the
22 independent review ("IRO") process. Plaintiffs did not previously raise either argument,
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24 ⁴ See, e.g., Eldredge, 662 F.2d at 537 (citing Provident Tradesmens Bank & Trust
25 Co. v. Patterson, 390 U.S. 102, 116 n.12 (1968)).

1 and they are now untimely. Even if the Court were to consider them, the arguments do
2 not justify reconsideration. Plaintiffs can, and to some extent have, obtained the damages
3 they seek from the IRO process. To the extent that they seek injunctive relief, a change to
4 Regence's plan, they are not precluded from seeking that change. A change in the plan
5 language would affect all subscribers regardless of whether a case is pursued on behalf of
6 a class.

7 For all of the foregoing reasons, plaintiffs' motion for reconsideration (Dkt. #103)
8 is DENIED.

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10 DATED this 20th day of October, 2009.

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14 Robert S. Lasnik
15 United States District Judge
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